IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 699 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PREMJIBHAI ALIAS NATHA DEVABHAI VANIK - Applicant(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR RC KAKKAD for Petitioner No(s).: 1.

MR KOGJE, Ld. APP for Respondent No(s).: 1.
NOTICE SERVED BY DS for Respondent No(s).: 1.
NOTICE SERVED for Respondent No(s).: 2.
MR AMAR D MITHANI for Respondent No(s).: 3.
MR HASHIM QURESHI for Respondent No(s).: 4.
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CORAM :HON'BLE MR.JUSTICE JAYANT PATEL

Date : 11/07/2005

ORAL JUDGMENT

1. **Rule**. Mr.Kogje, learned APP waives service of notice of rule for respondent No.1, Ms.Thakkar, learned Counsel for Mr.Lakhani waives service of notice of rule for Respondent No.2, Mr.Amar Mithani, learned Counsel waives service of notice of rule for Respondent No.3 and Mr.Qureshi, learned Counsel waives service of notice of rule for Respondent No.4. With the consent of the parties, the matter is taken up for final hearing today.

2. It is the case of the petitioner that the petitioner wanted his son to be married and he had applied to the leader/President of community for grant of permission. Such permission was declined and as per the petitioner a threat was given for stoppage of the marriage of the son of the petitioner and thereafter he was ex-communicated as per the case of the petitioner. It appears that the petitioner filed complaint to the District Superintendent of Police and the grievance of the petitioner is that no actions were taken by the Police and, therefore, under these circumstances the petitioner has approached this Court.

3. In response to the notice issued by this Court (Coram: C.K.Buch, J.) as per the order dated 13.5.2005, the respondents have appeared. It has been submitted by the learned APP, Mr.Kogje that the

District Superintendent Of Police has ordered for holding inquiry in connection with the complaint made by the petitioner and the inquiry report is submitted, but the District Superintendent of Police has yet to conclude on the said aspect and Mr.Kogje stated before the Court that after considering the inquiry report appropriate action in accordance with law shall be taken by the Police.

4. On behalf of the private respondents, it has been submitted by Mr.Mithani and others that no such threat was given as alleged in the complaint. However, Mr.Mithani was candid in admitting that the permission was to be granted, but the other Members of the Community insisted for making payment of the outstanding amount and as the petitioner declined, the dispute arose and as such thereafter the permission is not granted.

5. It is very unfortunate state of affairs that for getting a major son married a member of the Community is required to approach the leader/President of the Community for permission. As per the Constitution of India and as per law, an adult person who is in sound state of mind has right to marry with the girl of his choice without there being any such interference of the leaders of the Community. Even if the permission is declined on the ground that the outstanding amount is not paid of the other members of the community, the same cannot

be regarded as proper on the part of those who are claiming as the leaders of the community. Any action by any community or leader of the community by maintaining the dignity of the human being for upliftment of the community may be encouraged or welcomed, but the same cannot be allowed to operate which frustrates the maintenance of the human dignity. If an adult member of a community is not allowed to get married as per his own desire, though the family of such adult member is also agreeing, such obstruction or disturbance by the leaders of the community cannot be said as warranted under law. All sentiments of the community unless it is sanctioned by law cannot be enforced when it is to be tested on the implementation of law. Therefore, it appears that the private respondents who are representing the case of the community at large, could not have created any such hindrance in performance of marriage by the son of the petitioner.

6.I would have examined the matter further, however, at that stage, the learned Counsel for respondents No.2, 3, and 4, namely Mr.Mithani, Ms.Thakkar and Mr.Qureshi have declared before the Court that if the petitioner is desirous to get his son married with any girl of his choice, no disturbance whatsoever shall be created by them or other members of the community, therefore, I find it proper to

leave the matter at that stage, except observing that in the event the petitioner is desirous to get his son married with the girl of his choice, the other members of the community who may be the leader of the community or otherwise shall not create any disturbance, in any manner, whatsoever. It further deserves to be recorded that in the event such disturbance is apprehended and is reported by the petitioner to the Police, it will be the duty of the concerned officer in=charge of the police station to ensure that proper police protection is provided so that the petitioner can get his son married in a peaceful atmosphere.

7. So far as the complaint made by the petitioner is concerned, I find that as per the statement made by the learned APP, the inquiry is held and the District Superintendent of Police has yet to conclude the inquiry and, therefore, it is observed and directed that the District Superintendent of Police shall consider the matter and also the report of the inquiry and shall take appropriate action in accordance with law. However, in any case, it does transpire that there is an element of threat as mentioned in the complaint and, therefore, it would be for the police officer concerned to report to the Executive Magistrate for chapter case and to take bond in accordance with law for ensuring that there is no disturbance to law and order and the peace is

maintained at a place where the petitioner is staying and in the nearby area. Such exercise shall be undertaken and complied by the Police within two weeks from today.

8. It has been submitted by Mr.Mithani that the observations made by this Court may not be interpreted to create any additional right in favour of the petitioner for claiming any damages. It is made clear that the observations made by this Court are for maintenance of human dignity and the same will not be interpreted for giving any additional right to recover the damages, if otherwise not permissible in accordance with law.

9. The petition is allowed in terms of the above referred directions. Rule partly made absolute.

11.7.2005 **(Jayant Patel, J.)**

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